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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,638	02/16/2007	Walter Polak	HMNZ 2 00042	7384
27885	7590	01/08/2010		
FAY SHARPE LLP 1228 Euclid Avenue, 5th Floor The Halle Building Cleveland, OH 44115			EXAMINER HRUSKOCI, PETER A	
			ART UNIT	PAPER NUMBER
			1797	
			MAIL DATE	DELIVERY MODE
			01/08/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/566,638	Applicant(s) POLAK ET AL.	
	Examiner /Peter A. Hruskoci/	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1797

Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1, 12, and 16 "especially", in claims 6, 7, and 12 "it originates", in claim 8 "it involves", in claim 9 "acidic and alkali extracted", in claim 11 "can have", and in claim 13 "increased" and "highly" are vague and indefinite because it is unclear how these terms further limits the claims. In claim 2 "the alkali chlorides", in claim 4 "the pH-value", in claim 5 "the flocculating agents", in claim 13 "the resulting acid suspension" and "the solid flocculating- and sedimentation agents", and in claim 15 "the solid" lack clear antecedent basis. Claims 3, 10, and 14 depend from the above claims.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Schorghuber 4,402,850. It is submitted that the undissolved or solid portions separated from acid and alkali treated salt clay as disclosed in Schorghuber (see col. 3 line 28 through col. 5 line 16) are considered patentably indistinguishable from the solid flocculating and sedimentation agent in form of an acidic and alkali extracted clay as recited in the instant claim.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 12, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schorghuber. The claims differ from Schorghuber as applied above by reciting that the flocculating agent includes specific parts by weight of aluminate, silicate, and alkali chloride, and a specific pH-value. It is submitted that the rock-salt clays used to prepare the agent disclosed in Schorghuber would appear to produce a flocculating agents including the recited parts by weight of aluminate, silicate, and alkali chloride. It is further submitted that Schorghuber discloses the use of a pH-value of 9.0 to 11.0, and does not appear to exclude the use of a higher pH-value in the preparation of the agent. It would have been obvious to one skilled in the art to modify the agent of Schorghuber by utilizing the recited parts by weight and pH-value, to aid in preparing the flocculating agent. The specific parts by weight and pH-value utilized, would have been an obvious matter of process optimization to one skilled in the art, depending on the specific use for the flocculating agent and results desired, absent a sufficient showing of unexpected results.

Claims 10, 11, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schorghuber 4,402,850 as above, and further in view of Koppelman et al. 4,486,314. The claims differ from Schorghuber as applied above by reciting that the flocculating and sedimentation agent includes a specific average particle size. Koppelman et al. disclose (see col. 4 lines 3-60) that it is known in the art to utilize aluminosilicates have in the recited particle size, to aid in precipitating phosphates in sewage. It would have been obvious to one skilled in the art to modify the agent of Schorghuber by utilizing the recited particle size in view of the teachings of Koppelman et al., to aid in preparing a flocculating agent for precipitating phosphate. The specific particle size utilized, would have been an obvious matter of process

Art Unit: 1797

optimization to one skilled in the art, depending on the specific use for the flocculating agent and results desired, absent a sufficient showing of unexpected results.

Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schorghuber 4,402,850 as above, and further in view of Casale 4,035,259. The claims differ from Schorghuber as applied above by reciting that the method includes initially breaking down the salt clay in an acid medium at a specific temperature. Casale disclose (see col. 1 line 33 through col. 2 line 54) that it is known in the art to treat a clay with acid and heat, to aid in forming a flocculating composition. It would have been obvious to one skilled in the art to modify the agent of Schorghuber by utilizing the recited acid medium and temperature in view of the teachings of Casale, to aid in preparing the flocculating agent. The specific temperature and suspended solids contents utilized, would have been an obvious matter of process optimization to one skilled in the art, depending on the specific use for the flocculating agent and results desired, absent a sufficient showing of unexpected results.

Applicant's election of Group I, claims 1-16 and 19-21, in the reply filed on 11/9/09 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The restriction requirement is made final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Peter A. Hruskoci/ whose telephone number is (571) 272-1160. The examiner can normally be reached on Monday through Friday from 8:00AM-5:00PM.

Art Unit: 1797

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Peter A. Hruskoci/
Primary Examiner
Art Unit 1797

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